IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMARY SUIT NO. 1699 OF 2002.

M/s. Sudip & Co. ... Plaintiff.

V/s.

Mr.Shashank B. Dholakia ... Defendant.

Navin R. Patel for the plaintiff.

CORAM : D.G. KARNIK, J.

DATED : 22nd February 2005.

P.C :
---

. By the order dated 13th November, 2003 this Court granted conditional leave to the defendant to defend the suit subject to his depositing in the Court a sum of Rs.90,000/-. The plaintiff has filed on record a certificate of non-deposit dated 23rd July 2004. As the defendant has not deposited the money, the suit is listed for ex-parte hearing under rule 224 of the Bombay High Court (Original Side) Rules.

2. The plaintiff has also filed on record documents along with list dated 23rd June 2003 (documents filed on 14th October 2004). The documents are taken on record and collectively marked 'X' for identification.

3. The plaintiff claims to have advanced a sum of Rs.2,60,000/- to the defendant. It is admitted that the defendant repaid Rs.1,10,000/-. The plaintiff, therefore, has filed suit for recovery of sum of Rs.1,50,000/- being balance amount due.

4. There is no proof that the plaintiff has advanced Rs.2,60,000/- to the defendant. The plaintiff has only been able to show that he had advanced a sum of Rs.2,00,000/- to the defendant. Defendant has issued cheque towards payment. The original cheque is filed. However, in the meanwhile, the defendant paid back Rs.1,10,000/- and only balance of Rs.90,000/- is due. The plaintiff has also produced on record copies of the bank-statements. The bank-statments also show that the plaintiff has advanced to the defendant a sum of Rs.2,00,000/- on 19th June 1998. The bank pass-book does not show any entry in respect of alleged further advance of Rs.60,000/- by the plaintiff to the defendant. In the circumstances, the plaintiff has only proved advance of Rs.2,00,000/- and, therefore, he is only entitled to the decree of balance amount of Rs.90,000/-. Hence I pass the following order:

**O R D E R**

. The suit of the plaintiff is decreed in part.

. The defendant shall pay to the plaintiff a sum of Rs.90,000/- together with interest thereon at the rate of 9% per annum from the date of the suit till payment and proportionate costs of the suit.

*****